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No. 84-648

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

SEDIMA, S.P.R.L.,

Petitioner,

v.

IMREX COMPANY, INC., GIDON ARMON AND JACOB ARMON,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE A BRIEF AND BRIEF OF THE ALLIANCE OF AMERICAN INSURERS, THE AMERICAN COUNCIL OF LIFE INSURANCE, THE AMERICAN INSURANCE ASSOCIATION, THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, AND STATE FARM INSURANCE COMPANIES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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MOTION OF THE ALLIANCE OF AMERICAN INSURERS, THE AMERICAN COUNCIL OF LIFE INSURANCE, THE AMERICAN INSURANCE ASSOCIATION, THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, AND STATE FARM INSURANCE COMPANIES FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States: the Alliance of American Insurers, the American Council of Life Insurance, the American Insurance Association, the National Association of Independent Insurers, and State Farm Insurance Companies respectfully move, pursuant to Rule 36 of the Rules of this Court, for leave to file the attached brief as *amici curiae*. Although counsel for respondents has consented to the filing of this brief, counsel for petitioner has declined to consent.

INTEREST OF THE AMICI CURIAE

The National Association of Independent Insurers ("NAII") is the nation's largest property and casualty insurance trade association with more than 500 member companies. NAII members write nearly 40% of the property and casualty insurance in force in the United States.

The American Insurance Association ("AIA") is a national trade association of 174 property and casualty insurance companies. Its member companies account for approximately 25% of the property and casualty insurance written in the United States.

The Alliance of American Insurers (the "Alliance") is also a national property and casualty trade association. Its 175 member companies write approximately 12% of the nation's property and casualty insurance.

The American Council of Life Insurance ("ACLI") is the largest national trade association of the life insurance industry in the United States. Its 615 member companies account for approximately 95% of the life insurance in force in the United States.

The State Farm Insurance Companies ("State Farm") are a group of insurance companies composed of State Farm Mutual Automobile Insurance Company and its wholly-owned subsidiaries and affiliates. The State Farm Insurance Companies together constitute the nation's largest property and casualty insurer, accounting for approximately 10% of the property and casualty insurance in force in the United States.

The insurance company members of the Alliance, ACLI, AIA, and NAII, as well as State Farm, have been the victims of insurance fraud schemes perpetrated by organized criminal groups. Such schemes are among the types of activity that the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68 (1982), was designed to deter and State Farm and members of the Alliance, ACLI, AIA, and NAII have on occasion sought to recover treble damages for their injuries from these schemes under the civil provisions of RICO.

At the same time, however, these insurance companies have found themselves named as defendants in private civil RICO suits involving nothing more than garden-variety commercial disputes over the construction of a statute or contract. They have been labeled as "racketeers" for activities bearing no resemblance to the sorts of organized criminal activity that RICO was designed to prevent. These suits have significantly threatened the all-important business reputations of *amici*'s members and have been costly to defend.

Like the RICO cases brought against insurers, the present case and the other civil RICO case before the Court this term, *American National Bank and Trust Company of Chicago* v. *Haroco, Inc.*, involve attempts by private plaintiffs to apply RICO to alleged business frauds bearing none of the indicia of organized criminal activity. A decision by this Court broadly interpreting the scope of private civil RICO would expose insurance companies and other legitimate businesses to many more such suits. On the other hand, an overly narrow interpretation of the statute might bar insurers from recovering when they are victimized by the type of organized criminal behavior Congress enacted RICO to prevent.

Wherefore, it is respectfully requested that the Court grant leave to ACLI, AIA, NAII, the Alliance, and State Farm to file the attached brief as *Amici Curiae*.

Respectfully submitted,

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QUESTION PRESENTED FOR REVIEW

Whether a plaintiff must plead and prove racketeering enterprise injury in order to establish a claim for treble damages under Section 1964(c) of the Racketeer Influenced and Corrupt Organizations Act.

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BRIEF OF THE ALLIANCE OF AMERICAN INSURERS, THE AMERICAN COUNCIL OF LIFE INSURANCE, THE AMERICAN INSURANCE ASSOCIATION, THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, AND STATE FARM INSURANCE COMPANIES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

STATEMENT OF INTEREST

The Alliance of American Insurers, the American Council of Life Insurance, the American Insurance Association, the National Association of Independent Insurers, and State Farm Insurance Companies respectfully submit this brief as *amici curiae* to urge this Court to construe the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-

1968 (1982), in a manner that will preserve the availability of its civil treble-damage relief to persons who have been injured by activity characteristic of organized crime, but prevent its unwarranted extension to everyday commercial disputes not intended by Congress to be covered by the Act.

RICO was enacted to inhibit organized criminal activity and to protect innocent businesses from victimization by organized crime through infiltration, unfair criminal competition, and massive fraud. One of the businesses Congress intended to protect through RICO was the insurance industry, which had been injured repeatedly through concerted fraud schemes, especially arson frauds. *See, e.g.,* S. Rep. No. 617, 91st Cong., 1st Sess. 76, 77 (1969). As a result, insurance companies have brought a number of civil RICO actions in egregious cases to recover damages from such fraud schemes. *E.g., State Farm Fire and Casualty Co.* v. *Estate of Caton,* 540 F. Supp. 673 (N.D. Ind. 1982) (private RICO suit against convicted arson ring which had also engaged in extortion and murder).

In the last several years, however, civil RICO has been turned on its head. Many legitimate businesses, the intended beneficiaries of civil RICO, have found themselves named as defendants in federal RICO suits for treble damages based on incidents bearing no relation to the kinds of activity RICO was intended to prevent. In fact, these cases usually involve nothing more than garden-variety commercial disputes over the interpretation of statutes or contracts. The costs of defending against these RICO suits have been substantial and some businesses have felt forced to settle unmeritorious suits because of the risk of treble damages. In addition, these businesses have suffered significant injury to their reputation simply by being labeled as "racketeers" in complaints filed without restraints by private parties.

The insurance industry has been one of the major victims of this perversion of the purposes of RICO. Thus, insurance

companies have been sued under civil RICO in situations where the companies have merely conformed with standard industry practices.[1] In a series of Georgia cases, for example, approximately fifteen insurance companies have been sued under RICO for mail fraud. *E.g., May* v. *Travelers Insurance Co.,* Civil Action No. CV-484-411 (S.D. Ga. filed Dec. 12, 1984); *Bohannon* v. *Allstate Insurance Co.,* Civil Action No. CV-484-362 (S.D. Ga. filed Oct. 11, 1984); *Bateman* v. *State Farm Mutual Automobile Insurance Co.,* Civil Action No. CV-183-254 (S.D. Ga. removed to fed. ct. Nov. 23, 1983). In these cases, plaintiffs, often as purported representatives of a class, contend that under the Georgia no-fault statute insurers may not subrogate claims for which they have made full payment under automobile collision coverage and that these companies have injured their policyholders by limiting them to a single full recovery. Thus, through RICO, a disagreement regarding the proper interpretation of a state insurance law has been escalated into federal causes of action alleging fraud and racketeering and seeking treble damages and attorneys' fees.[2]

Barker v. *Underwriters at Lloyd's, London,* 564 F. Supp. 352 (E.D. Mich. 1983), provides another example of the inappropriate use of private RICO against an insurer. In that case, Lloyd's of London and the Lincoln Insurance Company,

[1] The following is a partial list of insurance companies which have been named as defendants in private RICO suits: Allstate Insurance Co., American Motorists Ins. Co., Atlanta Casualty Ins. Co., Cotton States Mutual Ins. Co., Georgia Farm Bureau Mutual, Lincoln Ins. Co., National Union Fire Ins. Co., Nationwide Ins. Co., Prudential Life Ins. Co. of America, Societe Commerciale de Reassurance, Southeastern Fidelity Ins. Co., Standard Guaranty Ins. Co., State Farm Fire and Casualty Ins. Co., State Farm Mutual Automobile Ins. Co., Travelers Ins. Co., Underwriters at Lloyd's, London, and United Services Automobile Association.

[2] Fearing their potential exposure in treble-damage civil RICO class actions, a number of insurance companies agreed to multimillion dollar settlements in two of these cases. Shortly thereafter, the Georgia Supreme Court upheld the insurance industry's position and rejected the plaintiff's interpretation of the no-fault statute. *Southeastern Fidelity Insurance Co.* v. *Nails,* Ga. Sup. Ct., Docket No. 41178 (decided March 14, 1985). Thus, by combining the threat of treble damages under RICO with potential classwide liability, plaintiffs extracted a substantial payment from these companies and coerced them to abandon a valid defense.

consistent with state-mandated claim settlement procedures, denied a claim under a fire insurance policy because they believed that the fire had been set by one of the plaintiffs. Plaintiffs sued, alleging, *inter alia,* a violation of RICO in that "defendants [through the use of the mails] have engaged in a scheme to defraud by fraudulently refusing to pay claims without valid reasons in order to force persons to compromise their claim for an amount less than they are entitled to under the insurance policies." *Id.* at 356.

Similarly, in *Activision, Inc.* v. *National Union Fire Insurance Co.,* Civil Action No. C-84-5352-MHP (N.D. Cal. filed Aug. 2, 1984), an insurance company was sued as a racketeer when it refused to make payments under, and sought to rescind, a directors and officers liability policy on the ground that misstatements had been made in the policy application. Plaintiffs alleged as a RICO violation that defendant was engaged in a scheme to issue such policies and collect premiums therefor with no intention of fulfilling its obligations under those policies. *Id.,* complaint at paras. 57-66.[3]

Thus, the insurance industry, an intended beneficiary of the statute, has become an unintended victim of civil RICO. As representatives of that industry, the American Council of Life Insurance, the American Insurance Association, the Alliance of American Insurers, the National Association of Independent Insurers, and State Farm Insurance Companies believe they offer a unique perspective on RICO that will aid the Court's consideration of this case. In this brief *amici curiae,* we suggest to this Court a principled interpretation of the statutory language of RICO, consistent with congressional intent, which distinguishes between proper and improper applications of

[3] It is important to note that in such cases RICO has been used in an effort to circumvent the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (1982). That Act prohibits the application to the insurance industry of any federal law not specifically relating to the business of insurance if that law would impair, invalidate, or supersede a state law regulating the business of insurance. By invoking the federal cause of action created by RICO, plaintiffs in these actions have forced into a federal forum the adjudication of actions that Congress intended be left to the states.

private civil RICO and which does not in any way hinder criminal enforcement of the statute. This interpretation requires a plaintiff to prove injury of the type RICO was enacted to prevent, injury characteristic of organized crime, in order to invoke the treble-damage remedy of civil RICO.[4]

SUMMARY OF ARGUMENT

RICO was passed by Congress with one purpose in mind: to eradicate organized crime and prevent its infiltration of legitimate businesses. It was *not* intended to provide new, federal treble-damage remedies for everyday commercial injuries for which other remedies already exist. In the last several years, however, many hundreds of civil RICO suits seeking treble-damage relief have been filed in federal court in situations having nothing to do with organized criminal activity. Conversely, very few private RICO actions have been brought against members of organized crime.

This Court should interpret RICO in light of its clear legislative purpose to eliminate organized crime and prevent its infiltration of legitimate businesses and thereby stem the tide of inappropriate civil RICO litigation. Specifically, a private RICO plaintiff should be required to prove "racketeering enterprise injury" in order to recover treble damages. Such a requirement is explicit in the statutory language of Section 1964(c) and is consistent with the interpretation given by this Court in *Brunswick Corp.* v. *Pueblo Bowl-o-Mat, Inc.,* 429 U.S.

[4] This brief does not address the other issue raised by the Court of Appeals decision in *Sedima:* whether criminal convictions are a prerequisite to the recovery of civil damages under RICO. *Amici* note the substantial arguments being advanced by the American Institute of Certified Public Accountants as *amicus curiae* and by respondents in support of the proposition that prior criminal convictions are required. *Amici* urge that, regardless of the conclusion reached by the Court on the prior conviction requirement, the Court should require proof of racketeering enterprise injury as a prerequisite to recovery in a private RICO action.

477 (1977), to virtually identical language in Section 4 of the Clayton Act, 15 U.S.C. § 15 (1982), upon which Congress modeled Section 1964(c).

As it did in the antitrust context in *Brunswick*, this Court should take the opportunity presented by this case and by *American National Bank and Trust Company of Chicago* v. *Haroco, Inc.* to define the type of racketeering enterprise injury required by private RICO. Such a definition should have at least two components:

> (1) that the plaintiff's injury must be of the type characteristically suffered by a victim of organized crime's infiltration, takeover, or operation of a business; and
>
> (2) in a private RICO action based upon an alleged violation of Section 1962(c) of the statute, that the plaintiff must have suffered injuries from a "pattern of racketeering activity," *i.e.*, two or more separate but related episodes of criminal conduct.

Both of these injury limitations are consistent with the structure and statutory language of RICO. They serve to distinguish between proper and improper applications of civil RICO, by focusing treble-damage relief on prolonged, organized criminal behavior.

ARGUMENT

I. RICO WAS ENACTED TO COMBAT ORGANIZED CRIME; JUDICIAL INTERPRETATION OF RICO MUST TAKE THIS LEGISLATIVE PURPOSE INTO ACCOUNT

A. RICO Was Enacted To Combat Organized Crime and To Prevent Its Infiltration of Legitimate Business

RICO was enacted as Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 941 (1970). The stated purpose of that act was "to seek the eradication of organized crime in the United States . . . by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." *Id.*

The history of the Organized Crime Control Act reinforces this stated legislative purpose. The act evolved from the report of the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967). That report concluded that "[i]nvestigation and prosecution of organized criminal groups in the 20th Century has seldom proceeded on a continuous, institutionalized basis." *Id.* at 196. President Nixon, therefore, early in 1969 urged Congress to take action because "the threat of organized crime cannot be ignored or tolerated any longer." H.R. Doc. No. 105, 91st Cong., lst Sess. at 2 (1969). Congress responded by enacting the Organized Crime Control Act which was a combination of eight separate bills dealing with various aspects of the problem of organized crime. S. Rep. No. 617 at 46-47.

Title IX of the act was RICO. RICO "has as its purpose the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S. Rep. No. 617 at 76. This purpose reflected Congress' growing awareness "of the depth of penetration of the forces of organized crime into the fabric of our society and our commercial life." *Id.* The Senate Report noted, for example, that, in one midwestern city, racketeers controlled or had large interests in 89 businesses with total assets of more than $800 million. *Id.* Once in control of a business, these crime syndicates would utilize techniques of violence and intimidation to gain an improper advantage in the marketplace. *Id.*

The principal tools chosen by Congress to effectuate RICO's purposes were criminal prosecutions, which may result in substantial jail sentences, stiff fines and even criminal forfeiture. 18 U.S.C. § 1963 (1982). In addition, Congress made available to the Federal Government civil remedies—such as injunctions and divestitures. 18 U.S.C. § 1964(a), (b) (1982). As a last-minute amendment, without any extended explanation or consideration, the House of Representatives added a provision for private treble-damage actions, 18 U.S.C. § 1964(c) (1982), explicitly modeled on Section 4 of the Clayton Act. *See Sedima, S.P.R.L.*, v. *Imrex Co.*, 741 F.2d 482, 488-92 (2d Cir. 1984) (discussing lack of

congressional consideration of private treble-damage provision). It was clearly anticipated that this private treble-damage provision would be used against organized criminals to effectuate the statute's purposes and to permit victims of organized crime to recover their economic losses.

There is no indication whatsoever in the legislative history that Congress intended either criminal or civil RICO to apply to anything other than the activities of organized crime.[5] As the United States Court of Appeals for the Ninth Circuit noted in *United States* v. *Marubeni America Corp.*, 611 F.2d 763 (9th Cir. 1980):

> We believe anyone who reads the legislative history must be struck by the singlemindedness with which Congress drafted RICO. Congress declared over and over again that its purpose was to rid legitimate organizations of the influence of organized crime. This purpose must be the linchpin of any construction of RICO.

611 F.2d at 769 n.11.

[5] Several Senators and Congressmen, as well as civil liberties groups, warned Congress that the terms of RICO could be applied to areas far removed from organized crime. *See* S. Rep. No. 617 at 215 (individual views of Sens. Hart and Kennedy); H.R. Rep. No. 1549, 91st Cong., 2d Sess. 187, *reprinted in* 1970 U.S. Code Cong. & Ad. News 4007, 4083 (dissenting views of Reps. Conyers, Mikva, and Ryan); *Measures Relating to Organized Crime: Hearings on S. 30, S. 974, S. 975, S. 976, S. 1623, S. 1624, S. 1861, S. 2022, S. 2122 and S. 2292, Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary*, 91st Cong., lst Sess. 475 (1969) (Statement of the American Civil Liberties Union). It cannot, however, be inferred from the fact that several opponents of the bill foresaw this potential distortion of RICO that Congress intended such distortion.

B. Many Private Civil RICO Suits Have Been Filed in Situations Bearing No Connection to Organized Criminal Activity

Despite this clear statutory purpose, private treble-damage actions under RICO against organized crime figures have been exceedingly rare. Instead, in the last several years, many hundreds, if not thousands,[6] of civil RICO suits seeking treble damages have been brought in situations having nothing to do with organized criminal activity.[7] Private RICO actions have been filed in landlord-tenant disputes, *Salisbury* v. *Chapman*, 527 F. Supp. 577 (N.D. Ill. 1981), domestic relations disputes, *Erlbaum* v. *Erlbaum*, [1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,772 (E.D. Pa. 1982), and intra-church disputes, *Van Schaick* v. *Church of Scientology*, 535 F. Supp. 1125 (D. Mass. 1982); *Congregation Beth Yitzhok* v. *Briskman*, 566 F. Supp. 555 (E.D.N.Y. 1983). Most frequently, treble-damage civil RICO claims have been added to ordinary commercial lawsuits and securities litigation. *See, e.g., Haroco, Inc.* v. *American National Bank and Trust Co. of Chicago*, 747 F.2d 384, 386-87 (7th Cir. 1984), *cert. granted*, 105 S. Ct. 902 (1985); *see also* 16 Sec. Reg. & L. Rep. (BNA) 639 (April 13, 1984) (in one survey, 84 of 118 reported civil RICO cases

[6] In their brief *amici curiae* supporting an expansive construction of civil RICO, the 34 state Attorneys General estimate that there may be as many as 5,000 private RICO suits filed in federal court each year. *Sedima, S.P.R.L.* v. *Imrex Co.*, Brief for Amici Curiae in Support of Petitioner at 23 n.31.

[7] This contrasts sharply with the use by prosecutors of RICO's criminal sanctions. Criminal RICO prosecutions have been brought most frequently against organized crime families, *e.g., U.S. Indictment Says 9 Governed New York Mafia*, N.Y. Times, Feb. 27, 1985, at A1, col. 2 (RICO indictment of Mafia "Commission"); *19 Are Charged in City in Racketeering Inquiry*, N.Y. Times, Feb. 20, 1985, at B3, col. 5 (RICO indictment of Genovese crime family leader and members), criminal gangs, *e.g., 25 Members of a Notorious Chinatown Gang Are Accused of Racketeering*, N.Y. Times, Feb. 19, 1985, at B1, col. 1 (RICO indictment of youth gang accused of extortion, shakedowns, protection rackets, and murder), and corrupt public officials, *e.g., U.S. Indicts Gov. Edwards*, Washington Post, March 1, 1985, at A1, col. 4 (RICO indictment of Governor of Louisiana). "In the past two years, Federal prosecutors have used the RICO statute to obtain indictments of more than 2,000 people in the United States as part of a national crackdown on organized crime." N.Y. Times, March 3, 1985, § 4, at 6, col. 2.

involved either securities or commercial fraud); Note, *Rico and Securities Fraud: A Workable Limitation,* 83 Colum. L. Rev. 1513, 1513 (1983) (invocation of civil RICO in ordinary commercial and securities litigation "has become a routine event").

These cases highlight the ease with which a plaintiff's attorney can construct a RICO claim under an expansive reading of the statute. Both mail fraud, 18 U.S.C. § 1341 (1982), and wire fraud, 18 U.S.C. § 1343 (1982), are included among the list of predicate acts of racketeering activity in Section 1961(1). A person, claiming injury from a commercial misrepresentation, need only identify two telephone calls or mailings (or one of each) made by a business in connection with the alleged misrepresentation in order to assert a treble-damage claim for violation of Section 1962(c). He can allege that the person(s) making the calls or signing the letters conducted the affairs of an enterprise, the business, through a pattern of racketeering activity, the two communications. *See Haroco, Inc.* v. *American National Bank,* 747 F.2d at 387. Such a distorted construction of RICO's civil provisions was clearly not what Congress intended in enacting the statute.

C. RICO Must Be Interpreted in Light of Its Legislative Purpose

Judicial interpretation of RICO must take into account the clear congressional purpose to combat organized crime and prevent its infiltration of legitimate businesses. This is so for two reasons. First, the statute explicitly directs that it be construed with reference to its purpose. Second, the private damage provision of RICO is ambiguous, as evidenced by the divergent interpretations of the lower courts.

Congress explicitly ordered consideration of RICO's legislative purpose in Section 904(a) of the statute which provides: "The provisions of this title shall be liberally construed *to effectuate its remedial purposes.*" 84 Stat. at 947 (emphasis added). *See Sedima,* 741 F.2d at 488 ("We are, then, obliged to study the legislative history of RICO and particularly of section 1964(c) to inform our reading of that statute and, in

particular, of the scope of the private civil remedy created by the Congress"); *see also* Bridges, *Private Rico Litigation Based Upon "Fraud in the Sale of Securities,"* 18 Ga. L. Rev. 43, 57 n.92 (1983) ("The law itself calls for reference to legislative intent . . . since the liberal construction clause declares that the text should be construed to 'effectuate its remedial purposes' "). Section 904(a) does not simply require that RICO be broadly construed. Instead, that section calls for a construction which would best "effectuate its remedial purposes." 84 Stat. at 947. Thus, in the two prior Supreme Court decisions interpreting RICO, *United States* v. *Turkette,* 452 U.S. 576 (1981), and *Russello* v. *United States,* 464 U.S. 16 (1983), this Court construed RICO's statutory terms broadly in order to prevent organized criminals from escaping punishment (*Turkette*) and forfeiture (*Russello*) under the statute. The two private civil RICO cases now before the Court, by contrast, present a situation where a precise construction of the statute is necessary "to effectuate its remedial purposes."

In addition, reference to legislative purpose is appropriate to ascertain the meaning of statutory language where, as here, that language is ambiguous. *Griffiths* v. *Commissioner,* 308 U.S. 355, 358 (1939) ("Legislative words are not inert, and derive vitality from the obvious purposes at which they are aimed"); *Church of the Holy Trinity* v. *United States,* 143 U.S. 457, 459 (1892) ("It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers"). *See also United States* v. *American Trucking Associations,* 310 U.S. 534, 543 (1940) ("Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words") (quoting *Ozawa* v. *United States,* 260 U.S. 178, 194 (1922)).

The sharp disagreements among lower federal courts in their attempts to construe a variety of RICO provisions indicate that RICO "presents a classic case of a statute whose ambiguous language needs to be construed in light of Congress's purpose in enacting it." *Sedima,* 741 F.2d at 488; *see also*

Bridges, 18 Ga. L. Rev. at 57 n.92. Therefore, for this reason as well, RICO must be construed in light of the congressional purpose to eradicate organized crime and to remove its influence from legitimate business. Such a construction leads to the conclusion that a plaintiff must demonstrate "racketeering enterprise injury" in order to recover damages under civil RICO.

II. A PRIVATE CIVIL RICO PLAINTIFF MUST PROVE THAT HE HAS SUFFERED "RACKETEERING ENTERPRISE INJURY," THAT IS, INJURY OF THE TYPE RICO WAS INTENDED TO PREVENT

The main substantive provision of RICO is Section 1962. That section makes it unlawful, *inter alia,* (1) to invest income derived from a pattern of racketeering activity in any enterprise engaged in interstate commerce, 18 U.S.C. § 1962(a) (1982); (2) to acquire or maintain control of such an enterprise through a pattern of racketeering activity, 18 U.S.C. § 1962(b) (1982); (3) to conduct or participate in the conduct of such an enterprise's affairs through a pattern of racketeering activity, 18 U.S.C. § 1962(c) (1982); or (4) to conspire to engage in any of these activities, 18 U.S.C. § 1962(d) (1982). Taken together, the various subsections of Section 1962 form a coherent scheme for dealing with the problem of infiltration of legitimate businesses by organized crime. Subsection (a) prevents the infiltration of a business with profits derived from organized criminal activity; subsection (b) prevents the takeover of a business by means of organized criminal activity; and subsection (c) prohibits the illegitimate operation of a legitimate business that has been taken over by organized crime. [8]

[8] As this Court made clear in *Turkette,* Section 1962(c) also applies to the operations of an illegitimate enterprise. 452 U.S. at 580-93 ("enterprise" encompasses both legitimate and illegitimate enterprises). Congress clearly was aware of, and concerned about, such criminal enterprises and their effects on legitimate business. *Id.* at 591. Nevertheless, the primary focus of RICO was on the infiltration by organized crime of legitimate business and the various subsections of Section 1962 form a coherent plan for dealing with that problem. *Id.* and n.13.

In order for a plaintiff to recover through a private RICO action he must satisfy the requirements of Section 1964(c) of the Act. That section provides that:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. § 1964(c) (1982).

The plain language of Section 1964(c) makes it clear that RICO does not provide a civil remedy to plaintiffs who have merely suffered injury from predicate acts of racketeering activity. Such acts of racketeering activity, defined in Section 1961(1) of RICO, were already criminal under existing provisions of state or federal law and persons injured by such acts already had available avenues of legal recourse in state or federal courts. Rather, in enacting RICO, Congress was concerned with a very particular type of criminal activity—that connected with organized crime's infiltration of legitimate businesses. Therefore, Congress only provided private civil relief under RICO for plaintiffs who had been injured "*by reason of a violation of section 1962.*" As Judge Oakes correctly concluded in the Court of Appeals decision below:

> RICO was intended not simply to provide additional remedies for already compensable injuries, but rather to provide added remedies and procedures to fight certain specific kinds of organized criminality. The "by reason of" language, therefore, requires that plaintiffs allege injury caused by an activity which RICO was designed to deter, which, whatever it may be, is different from that caused simply by such predicate acts as are alleged here.

Sedima, 741 F.2d at 494 (footnote omitted).[9]

This interpretation of the "by reason of" language of Section 1964(c) is consistent with its legislative history. In enacting RICO, Congress sought to utilize the "weapons available under the antitrust laws to attack the 'property' of organized crime." *Organized Crime Control: Hearings on S.30, and Related Proposals, Relating to the Control of Organized Crime in the United States, Before Subcommittee No. 5 of the House Committee on the Judiciary,* 91st Cong., 2d Sess. 157 (1970) (statement of Attorney General Mitchell); *see also* S. Rep. No. 617 at 81; therefore, Congress deliberately adopted the language of Section 1964(c) from Section 4 of the Clayton Act. That section created a treble damage remedy for "[a]ny person who shall be injured in his business or property *by reason of* anything forbidden in the antitrust laws. . . ." 15 U.S.C. § 15 (1982) (emphasis added). In *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.,* 429 U.S. 477, 489 (1977), this Court ruled that Section 4 treble-damage relief was available only to a plaintiff who had suffered "injury of the type the antitrust laws were intended to prevent." [10] By direct analogy, for a plaintiff to recover treble damages on account of a violation of Section

[9] This distinction is quite clear in the context of a violation of subsection (a) or (b) of Section 1962. Frequently, in such situations, the person injured by a racketeer's acquisition of an interest in or takeover of an enterprise will not have suffered injury from the underlying pattern of racketeering activity. The predicate acts made it possible for the racketeer to gain control of the enterprise, but it is the person injured by that control, such as a minority partner in the enterprise or a competitor, that is the victim of a RICO injury. Note, *supra* p. 10, at 1532.

[10] The Court stated further:

> We therefore hold that for plaintiffs to recover treble damages on account of § 7 violations, they must prove more than injury causally linked to an illegal presence in the market. Plaintiffs must prove *antitrust* injury, which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful.

429 U.S. at 489 (emphasis in original).

1962 of RICO, he should be required to prove "racketeering enterprise injury," that is, injury of the type RICO was intended to prevent.[11]

III. RACKETEERING ENTERPRISE INJURY DEFINED

A majority of the lower federal courts considering the problem have concluded that a civil RICO plaintiff must prove "racketeering enterprise injury" in order to recover treble damages. *See, e.g., Alexander Grant & Co.* v. *Tiffany Industries,* 742 F.2d 408, 413 (8th Cir. 1984); *Bankers Trust Co.* v. *Rhoades,* 741 F.2d 511, 516 (2d Cir. 1984); *Margolis* v. *Republic National Bank,* 585 F. Supp. 595, 597 (S.D.N.Y. 1984); *In re Action Industries Tender Offer,* 572 F. Supp. 846, 852 (E.D. Va. 1983); *Harper* v. *New Japan Securities Int'l, Inc.,* 545 F. Supp. 1002, 1006-08 (C.D. Cal. 1982); *Landmark Savings & Loan* v. *Loeb Rhoades, Hornblower & Co.,* 527 F. Supp. 206, 208-09 (E.D. Mich. 1981). Courts which have rejected this injury requirement have done so in part because of difficulty in defining this term adequately. *See, e.g., Haroco, Inc.* v. *American National Bank and Trust Co.,* 747 F.2d 384, 389 (7th Cir. 1984), *cert. granted,* 105 S. Ct. 902 (1985); *In re Catunella and E.F. Hutton and Co. Sec. Litigation,* 583 F. Supp. 1388, 1436-37 (E.D. Pa. 1984).

[11] Courts which have rejected special RICO injury requirements have stressed that Congress expressly chose not to attach RICO to the antitrust laws. *See, e.g., Schacht* v. *Brown,* 711 F.2d 1343, 1357 (7th Cir.), *cert. denied,* 104 S. Ct. 509 (1983); *Ralston* v. *Capper,* 569 F. Supp. 1575, 1580 (E.D. Mich. 1983). They argued that this was done so as to avoid importing antitrust principles of standing into RICO. *Subcommittee No. 5 Hearings on S.30, supra* p. 14, at 149 (statement of the Antitrust Section of the American Bar Association; 115 Cong. Rec. 9567 (daily ed. April 28, 1969) (statement of Sen. McClellan); 115 Cong. Rec. 6993 (daily ed. March 3, 1969) (statement of Sen. Hruska). From these arguments, one may conclude that RICO should not be interpreted to require an antitrust-type, "competitive" injury. *See, e.g., Bunker Ramo Corp.* v. *United Business Forms, Inc.,* 713 F.2d 1272, 1288 (7th Cir. 1983); *Schacht* v. *Brown,* 711 F.2d at 1358; *Bennett* v. *Berg,* 685 F.2d 1053, 1059 (1982), *aff'd en banc,* 710 F.2d 1361 (8th Cir.), *cert. denied,* 104 S. Ct. 527 (1983). But it does not follow therefrom that Congress intended no limitation on private civil RICO actions. As the Court of Appeals below noted: "By borrowing language imposing a standing limitation, it is reasonable to believe that Congress indicated a desire to have an analogous standing limitation imposed in RICO." *Sedima,* 741 F.2d at 495.

As it did in the antitrust context in *Brunswick*, this Court should take the opportunity presented by this case and by *American National Bank* v. *Haroco, Inc.* to define the parameters of racketeering enterprise injury. Such a definition need not be so precise as to resolve every case which may conceivably be brought under the private civil provisions of RICO. Under the antitrust laws, from which the private civil provisions of RICO were adapted, Congress intended that the courts would develop a common law of the conduct prohibited and the types of antitrust injuries which can be compensated. *See* P. Areeda & D. Turner, *Antitrust Law* ¶ 302 (1978) (Sherman Act gave federal courts general authority to develop antitrust law through common law method). Analogously, the lower federal courts, with guidance from this Court, can evolve the standards for permitting private treble-damage civil RICO actions.

This Court must enunciate the broad principles which will guide the lower Federal courts. Any definition of racketeering enterprise injury must be consistent with both the statutory language and the legislative purpose of RICO. It should limit recovery to plaintiffs who have suffered "injury of the type [RICO was] intended to prevent." *Amici curiae* suggest that any such definition should have two components, both reflective of RICO's concern with ongoing, concerted criminal behavior. First, the plaintiff's injury must be of the type characteristically suffered by victims of organized crime and its infiltration, takeover, and operation of a business. Second, where a violation of Section 1962(c) is alleged, the plaintiff must be injured by the conduct of an enterprise through a pattern of racketeering activity; that is, his injury must stem from multiple episodes of criminal conduct linked by common objectives or means.

1. A Private RICO Plaintiff's Injury Must Be Characteristic of That Suffered by a Victim of Organized Crime

First, in order to show that he has suffered racketeering enterprise injury, a plaintiff should be required to prove that his injury was characteristic of that suffered by a victim of organized crime in its infiltration, takeover, or operation of an enterprise. This conclusion is implicit in the structure of RICO. RICO proscribes conduct that is committed often, but not always, by organized crime groups. The statute then calls for a discretionary determination whether, in a particular case, a plaintiff's injury which fits within the literal terms of the statute is characteristic of that suffered by victims of organized crime.

As noted, *supra* p. 12, the various subsections of Section 1962 proscribe different stages of a course of conduct characteristic of the manner in which organized crime infiltrates legitimate businesses. S. Rep. No. 617 at 123 (Letter from Deputy Attorney General Kleindienst) ("The prohibitions contained in section 1962 of the bill appear to be broad enough to cover most of the methods by which ownership, control, and operation of business concerns are achieved"). An element of each such course of conduct is the commission of a pattern of racketeering activity. Racketeering activity, as defined in the statute, is not limited to acts always or primarily committed by organized crime syndicates. Instead, Section 1961(1) identifies a set of offenses "characteristic of organized crime." 116 Cong. Rec. 18,940 (daily ed. June 9, 1970) (Statement of Sen. McClellan); *see also* S. Rep. No. 617 at 34. The statutory language sweeps broadly in order to ensure that all incidents of organized crime infiltration of legitimate businesses are within its scope.

RICO then demands an exercise of discretion. In the criminal context, this discretion is prosecutorial in nature. *See, e.g., United States* v. *Weisman*, 624 F.2d 1118, 1123 (2d Cir.), *cert. denied*, 449 U.S. 871 (1980) (warning against "danger of abuse where a prosecutor attempts to apply the statute to situations for which it was not primarily intended") (quoting *United States* v. *Huber*, 603 F.2d 387 (2d Cir. 1979), *cert. denied*, 444 U.S. 1085 (1980)). Prosecutors will not bring criminal RICO actions against all persons whose conduct fits within the literal terms of the statute, but will only prosecute cases in which the conduct involved is characteristic of organized crime. Indeed, the Department of Justice has established such a policy in published RICO Guidelines designed to

protect against the statute's potential abuse. Executive Office for U.S. Attorneys, United States Attorneys' Staff Manual, *RICO Guidelines* (1981).

In the context of private RICO civil suits, prosecutorial discretion is absent. The potential for abuse is consequently manifest; the sheer number of civil RICO claims asserted in ordinary commercial litigation demonstrates that the plaintiff's bar does not consider itself bound to employ RICO only in situations characteristic of organized crime. To prevent unwarranted applications of the treble-damage provision of RICO, Congress drafted Section 1964(c) in a manner that requires courts to exercise discretion and see that RICO is "not abused and applied to contexts outside those intended by Congress." *Moss* v. *Morgan Stanley Inc.*, 553 F. Supp. 1347, 1359 (S.D.N.Y.), *aff'd on other grounds*, 719 F.2d 5 (2d Cir. 1983), *cert. denied*, 104 S. Ct. 1280 (1984). Congress did so by including the "by reason of" language in Section 1964(c). As with antitrust injury following *Brunswick*, a court must determine whether a plaintiff's injury is of the type RICO was intended to prevent, that is, whether it is characteristic of that suffered by victims of organized crime as a result of the infiltraton, takeover, or operation of an enterprise. If plaintiff's injury is not of that type, his RICO claim must be dismissed.

Congress gave courts ample guidance to make this determination. The legislative history of RICO is replete with examples of injuries characteristic of organized criminal conduct. These include: insurance companies defrauded by arson rings, S. Rep. No. 617 at 77, creditors' losses from bankruptcy scams, S. Rep. No. 617 at 35, 77; 116 Cong. Rec. 18,939 (daily ed. June 9, 1970) (statement of Sen. McClellan), businesses lost through extortion and usurious loan-sharking, S. Rep. No. 617 at 35, 77, injury to workers due to the takeover of labor unions followed by sweetheart contracts and the theft of union funds, S. Rep. No. 617 at 78, and consumers forced to pay higher prices and competitors driven out of business by the monopolization of an industry through the use of force, S. Rep. No. 617 at 77. Other examples can readily be identified.

More generally, Congress has identified a set of indicia which themselves are characteristic of organized criminal conduct and the infiltration by organized crime of legitimate businesses. Such indicia include: (1) the use of violence or the threat of violence, S. Rep. No. 617 at 41, 76, 77, 81; 116 Cong. Rec. 18,939-40 (daily ed. June 9, 1970) (statement of Sen. McClellan); 116 Cong. Rec. 35,227 (daily ed. Oct. 6, 1970) (statement of Rep. Steiger); (2) techniques of intimidation, S. Rep. No. 617 at 35, 76, 77; 116 Cong. Rec. 18,939 (daily ed. June 9, 1970) (statement of Sen. McClellan); (3) corruption, S. Rep. No. 617 at 41, 81; 116 Cong. Rec. 35,227 (daily ed. Oct. 6, 1970) (statement of Rep. Steiger); and (4) the involvement of multiple criminal actors, *see* Blakey & Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 Temp. L. Q. 1009, 1025 (1980) (RICO "directed at groups of individuals informally organized for a common purpose"); National Advisory Committee on Criminal Justice Standards and Goals, *Organized Crime: Report of the Task Force on Organized Crime*, p. 7 (1976) (organized crime involves "the hierarchical coordination of a number of persons in the planning and execution of illegal acts . . . .").

In order to show that he had suffered a racketeering enterprise injury, therefore, a civil RICO plaintiff should be required to prove that he has suffered injury characteristic of the victims of organized crime. This could be demonstrated either by showing that the plaintiff had been victimized by a pattern of organized criminal conduct in a manner described in RICO's legislative history or by showing the presence of several indicia of organized criminal behavior. *Cf.* Note, *supra* p. 10, at 1539 (the term "fraud in the sale of securities" in RICO should be limited to types of securities fraud mentioned in RICO's legislative history and closely analogous violations). Such a showing would necessarily be highly fact-specific; however, it would likely exclude most of the garden-variety commercial fraud civil RICO suits that have been flooding the federal courts.

It is important to stress that this requirement that a civil RICO plaintiff's injury be of the type suffered by victims of

organized crime is not the same as requiring that all RICO defendants be members of organized crime. This element of a racketeering enterprise injury focuses not on a defendant's status, but on the nature of the plaintiff's injury. Only "injury of the type [RICO was] intended to prevent" is injury "*by reason of* a violation of Section 1962" and compensable under Section 1964(c).

Two commentators, who advocate an expansive application of civil RICO, stated "there is nothing in RICO that says that, if legitimate businessmen act like racketeers, they should not be treated like racketeers." Blakey & Gettings, *supra* p. 19, at 1029 n.91. The insurance industry agrees. When legitimate businessmen act like racketeers, and cause injury characteristic of racketeers, they should be treated like racketeers. But before a civil RICO action can be brought against legitimate businessmen, they must have acted like racketeers.

2. To Demonstrate Racketeering Enterprise Injury Under Section 1962(c), the Plaintiff Must Have Suffered Injuries from Two or More Separate but Related Episodes of Racketeering Activity

The second suggested element of racketeering enterprise injury attacks another aspect of the problem of organized crime, focusing on its ongoing, repetitive nature. A private RICO plaintiff, alleging a violation of Section 1962(c) of the statute,[12] should be required to prove that he has suffered injuries from at least two separate but related episodes of criminal conduct.[13]

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[12] Section 1962(c) of RICO is the provision alleged to have been violated in both *Sedima* and *Haroco*, and in 97% of all RICO treble-damage actions. *Report of the Ad Hoc Civil Rico Task Force of the ABA Section of Corporation, Banking and Business Law 55 (1985).*

[13] In a civil RICO class action, each member of the plaintiff class must have been injured by two separate, but related episodes of criminal conduct committed by the defendant(s). Class members may not aggregate their injuries to satisfy the racketeering enterprise injury requirement. *Cf. Zahn* v. *International Paper Co.*, 414 U.S. 291 (1973) (each class member must independently satisfy the jurisdictional-amount requirement).

Section 1964(c) provides treble-damage relief only to persons who have been injured "by reason of a violation of Section 1962." The violation proscribed by subsection (c) of Section 1962 is "the conduct of [the affairs of an enterprise engaged in interstate commerce] *through a pattern of racketeering activity*" (emphasis added). Therefore, in order to have sustained racketeering enterprise injury, a private RICO plaintiff must have been injured by the pattern of racketeering activity carried out on behalf of the enterprise.

To have been injured by the pattern, the plaintiff first must have been injured by multiple predicate acts of criminal conduct, because RICO explicitly provides that a pattern of racketeering activity "requires at least two acts of racketeering activity." 18 U.S.C. § 1961(5) (1982). *Cf. Yancoski* v. *E. F. Hutton & Co., Inc.*, 581 F. Supp. 88, 96 (E.D. Pa. 1983) ("The requirement of injury by reason of a violation of section 1962 should therefore be read as simply requiring that the plaintiff was injured by at least two acts of racketeering activity—a pattern—charged to the defendant").

In addition, in order for a RICO plaintiff to have been injured by a pattern of racketeering activity, the predicate acts of racketeering that injured him must bear some relationship to each other, such as a common scheme, plan, or motive. *See, e.g., United States* v. *Brooklier,* 685 F.2d 1208, 1222 (9th Cir. 1982), *cert. denied,* 459 U.S. 1206 (1983) (acts must be connected by common scheme, plan, or motive); *United States* v. *Starnes,* 644 F.2d 673, 678 (7th Cir.), *cert. denied,* 454 U.S. 826 (1981) (acts must be logically connected); *United States* v. *Kaye,* 556 F.2d 855, 860-61 (7th Cir.), *cert. denied,* 434 U.S. 921 (1977) (acts must be interrelated); *United States* v. *Stofsky,* 409 F. Supp. 609, 614 (S.D.N.Y. 1973) (common scheme, plan, or motive required), *aff'd,* 527 F.2d 237 (2d Cir. 1975), *cert. denied,* 429 U.S. 819 (1976); *United States* v. *White,* 386 F. Supp. 882, 883-84 (E.D. Wis. 1974) (interrelationship between acts required). *But see United States* v. *Weisman,* 624 F.2d at 1121-23; *United States* v. *Elliott,* 571 F.2d 880, 899 n.23 (5th Cir.), *cert. denied,* 439 U.S. 953 (1978).

Such a relationship is required by RICO's statutory language. Unlike all of the other definitions in Section 1961, Section 1961(5) does not define a pattern of racketeering activity. Instead, it establishes a minimum that is necessary, but may not be sufficient, to constitute a pattern of racketeering activity. A pattern of racketeering activity "*requires at least* two acts of racketeering activity." 18 U.S.C. § 1961(5) (1982) (emphasis added). As Senator McClellan, one of the Organized Crime Control Act's principal sponsors, noted: "The term 'pattern' itself requires the showing of a relationship .... [P]roof of two acts of racketeering activity, without more, does not establish a pattern ...." 116 Cong. Rec. 18,940 (daily ed. June 9, 1970). *See also, Subcommittee No. 5 Hearings on S.30, supra* p. 14, at 664-65 (testimony of Will Wilson, Assistant Attorney General, and Ronald Gainer, Deputy Chief of the Criminal Division, Department of Justice) ("acts of racketeering activity proved must be related" (Wilson); "[i]f they are not related they would not form a pattern" (Gainer)).[14]

Finally, to form a pattern of racketeering activity, the predicate acts which injured the plaintiff must have occurred in separate criminal episodes; Congress, in enacting RICO, was concerned with continuous, ongoing criminal activity. *See, e.g.,* S. Rep. No. 617, 91st Cong., 1st Sess. at 158 (1969) ("The infiltration of business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which

[14] Additional evidence that Congress intended a "pattern of racketeering activity" to require a relationship between the predicate acts can be found in the use of the word "pattern" in a similar, simultaneously enacted provision of the Organized Crime Control Act of 1970. In 18 U.S.C. § 3575(e) (1982), concerning dangerous special offender sentencing, Congress provided that "criminal conduct forms a *pattern* if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events" (emphasis added). Construing the provisions of the Organized Crime Control Act *in pari materia, United States* v. *Becker,* 461 F.2d 230, 232 (2d Cir. 1972), *vacated on other grounds,* 417 U.S. 903 (1974), it is reasonable to conclude that Congress intended a "pattern of racketeering activity" to require that the predicate acts be similarly interrelated. *See United States* v. *Stofsky,* 409 F. Supp. at 614.

combines to produce a pattern"). Therefore, Congress enacted the pattern requirement in RICO to ensure that the statute would only apply to persons engaged in repeated criminal conduct. *See United States* v. *Field,* 432 F. Supp. 55, 59 (S.D.N.Y. 1977), *aff'd,* 578 F.2d 1371 (2d Cir.), *cert. dismissed,* 439 U.S. 801 (1978) ("The language of the Act, which makes a pattern of conduct the essence of the crime, 'clearly contemplates a prolonged course of conduct'") (quoting *Toussie* v. *United States,* 397 U.S. 112, 120 (1970)); *see also Teleprompter of Erie, Inc.* v. *City of Erie,* 537 F. Supp. 6, 12-13 (W.D. Pa. 1981) (Two act requirement "was included to ensure that RICO was utilized to prevent incidents constituting, or likely to constitute a continuous course of unlawful conduct. The stress is on a *series* of incidents and schemes which are *ongoing*") (emphasis in original). Apart from this legislative history, some courts have found a separate episode requirement implicit in the meaning of "pattern." *See United States* v. *Moeller,* 402 F. Supp. 49, 57 (D. Conn. 1975) ("[T]he common sense interpretation of the word 'pattern' implies acts occurring in different *criminal episodes,* episodes that are at least somewhat separated in time and place yet still sufficiently related by purpose to demonstrate a continuity of activity") (emphasis in original). *But see United States* v. *Parness,* 503 F.2d 430 (2d Cir. 1974), *cert. denied,* 419 U.S. 1105 (1975).

Requiring a private RICO plaintiff to show that he had been injured by two or more related episodes of criminal conduct as part of a racketeering enterprise injury requirement would have two salutary effects on the application of civil RICO. First, it would limit civil RICO to patterns of criminal activity "that tend[] to characterize the perpetrator as a person who regularly uses crime as a means of achieving his desired ends." *Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law* 8 (1985) (supporting a separate but related episodes interpretation of pattern of racketeering activity). Second, unlike some other proposed definitions of racketeering enterprise injury, this requirement would allow a civil RICO plaintiff to recover treble damages for all of the injuries he suffered as a result of

underlying predicate acts of criminal conduct; his RICO recovery would not be limited to "indirect injury." *See, e.g., Haroco, Inc.* v. *American National Bank*, 747 F.2d at 392; *Schacht* v. *Brown*, 711 F.2d at 1356-58; Strafer, Massumi & Skolnick, *Civil RICO in the Public Interest: "Everybody's Darling,"* 19 Am. Crim. L. Rev. 655, 706 (1982) (all criticizing limitation of civil RICO to indirect injuries).

At the same time, this element of racketeering enterprise injury would not hinder criminal enforcement of RICO. The Department of Justice *RICO Guidelines* already prohibit a prosecutor from seeking a RICO indictment where all of the acts of racketeering arise from a single criminal episode or transaction, *RICO Guidelines, supra* p. 18, Guideline IV, No. 9-110.340, and federal prosecutors usually insist upon some relationship between the predicate acts. *See, e.g., United States* v. *Stofsky*, 409 F. Supp. at 613 (prosecutor suggested to the court that RICO requires predicate acts to be connected by common scheme, plan, or motive). Finally, unlike a private civil action, a RICO prosecution could still be brought where the defendants committed several related predicate offenses against different victims.

CONCLUSION

For the reasons stated herein, *amici curiae* respectfully urge this Court to hold that a plaintiff must plead and prove racketeering enterprise injury in order to state a claim and recover treble damages under RICO. Such an injury can be demonstrated by proof that the injury was characteristic of that suffered by victims of organized crime and, in a suit alleging a violation of Section 1962(c), that the plaintiff has suffered injuries from a pattern of two or more related episodes of racketeering activity. Such a holding, consistent with the statutory language, structure, and legislative intent of RICO, would allow true victims of organized criminal conduct to recover fully for their injuries. At the same time, this construction would limit the perverse application of RICO, never intended by Congress, to everyday commercial disputes.

In the case before the Court, the petitioner has allegedly suffered injury from repeated overcharges. The acts complained of bear none of the indicia of organized criminal conduct. They involve no violence, intimidation, or corruption, and could have been carried out by a single criminal actor. Instead, if the allegations are true, Sedima, S.P.R.L., is the victim of a straightforward case of business fraud. Petitioner is entitled to seek recovery of its losses in a state fraud action. Its civil RICO claim, however, should be dismissed and the judgment of the Court of Appeals of the Second Circuit should be affirmed.

Respectfully submitted,

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